

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

GLENN REEDER
(Claimant)
c/o CSEA

PRECEDENT
BENEFIT DECISION
No. P-B-452
Case No. 86-10467

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. OAK-09722-A

The Department appealed from that portion of the decision of the administrative law judge which held that the claimant was entitled to be paid benefits pursuant to the provisions of section 1452 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant had been employed by the Fremont campus of the California School for the Blind for about fifteen years, most recently as a dormitory attendant. When the summer recess began in 1986 he reopened his claim for unemployment compensation benefits. He submitted continued claim forms for the weeks ending June 21, 1986 through July 26, 1986. The Department denied benefits.

In a determination which has become final, the Department held the claimant was ineligible for benefits under section 1253.3 of the code beginning June 15, 1986 and ending when the disqualifying conditions no longer exist. The Department also issued a determination which held the claimant was ineligible for benefits for an indefinite period beginning June 15, 1986 under section 1452 of the code. It is that determination which is the subject of the appeal to this Board.

In another determination which has become final, the Department held the claimant was disqualified from receiving benefits

under section 1257(a) of the code beginning August 25, 1985 and continuing until he has filed a claim for each of four weeks in which he is otherwise eligible for benefits.

The Department agrees the claimant would be entitled to benefits for the weeks ending June 21, 1986 through July 26, 1986 if he were not ineligible and disqualified for those weeks under sections 1253.3 and 1257(a) of the code.

REASONS FOR DECISION

Section 140, Part 1, Division 1, Unemployment Insurance Code, states, "Unemployment compensation benefits refers to benefits payable under Part 1 of this division."

Section 1251 of the code states, "Unemployment compensation benefits are payable from the Unemployment Fund to unemployed individuals who are eligible under this part [Part 1]."

Section 1253.3 of the code generally provides that unemployment compensation benefits based on work performed for an educational institution are not payable during a school recess period when an individual has reasonable assurance of returning to such work following the recess period.

Chapter 5.5 of Part 1, Division 1, Unemployment Insurance Code, is entitled "BETWEEN TERMS UNEMPLOYMENT COMPENSATION FOR NONPROFESSIONAL EMPLOYEES OF STATE SPECIAL SCHOOLS."

Section 1451 of Chapter 5.5 states:

"Nonprofessional employees of the Fremont and Riverside campuses of the California School for the Deaf, the Fremont campus of the California School for the Blind, and the diagnostic schools for the neurologically handicapped located in Los Angeles, San Francisco, and Fresno, shall be eligible for benefits provided by this chapter, on the same terms and conditions as are specified by this part, Part 3 (commencing with Section 3501), and Part 4 (commencing with Section 4001), for all other individuals, except where inconsistent with the provisions of this chapter. Except where inconsistent with the provisions of this chapter, the provisions of this division and authorized regulations shall apply to any matter arising pursuant to this chapter."

Section 1452 states:

"Notwithstanding Section 1253.3, between terms unemployment compensation benefits are payable by the Controller, from funds appropriated for support of the State Department of Education and allocated to the state special schools, upon authorization by the Employment Development Department to individuals who are eligible to receive these benefits under this chapter. These benefits shall only be paid for weeks of unemployment occurring between school terms and during an established and customary vacation period or holiday recess when other benefits are denied solely by reason of Section 1253.3."

From the above we conclude that between terms unemployment compensation benefits are a special type of unemployment compensation benefits payable to persons like the claimant who are nonprofessional employees of the California special schools during the summer recess when they are ineligible for regular unemployment compensation benefits. The special benefits are payable, however, only if the claimant is ineligible for regular benefits solely by reason of section 1253.3 of the code.

The claimant in this case is not ineligible for regular benefits solely by reason of section 1253.3 so long as he is also disqualified pursuant to section 1257(a) of the code and the special benefits are not payable during such time. The question presented is whether or not the claimant can serve a disqualification under section 1257(a) while ineligible for benefits under section 1253.3.

Section 1257(a), Unemployment Insurance Code, provides an individual is disqualified for benefits if the individual wilfully made a false statement or representation, with actual knowledge of the falsity thereof, or wilfully failed to report a material fact to obtain unemployment benefits.

Section 1260(c) of the code provides:

"An individual disqualified under subdivision (a) of Section 1257, under a determination transmitted

to him by the department, is ineligible to receive unemployment compensation benefits for the week in which the determination is mailed to or personally served upon him, or any subsequent week, for which he is first otherwise in all respects eligible for unemployment compensation benefits and for not more than nine subsequent weeks for which he is otherwise in all respects eligible for unemployment compensation benefits. No disqualification under this subdivision shall be applied to any week if all or any portion of the week is beyond the three-year period next succeeding the date of the mailing or personal service of the determination. This subdivision shall not apply to an individual prosecuted under Section 2101."

From sections 1257(a) and 1260(c) of the code we discern the Legislature's intent to impose a penalty upon those claimants who are not forthright with the Department by denying them unemployment compensation benefits for a maximum of ten weeks in which they would otherwise be eligible for benefits.

The special benefits payable under sections 1451 and 1452 of the code are payable from a different source than are regular benefits. However, they are truly unemployment compensation benefits as they are payable under Part 1, Division 1, of the code.

Here, but for the disqualification under sections 1257(a) and 1260(c) of the code, the claimant would have been eligible for the special unemployment compensation benefits provided for by sections 1451 and 1452 of the code for the weeks ending June 21, 1986 through July 12, 1986 because he would have been ineligible for regular benefits solely by reason of section 1253.3. That is, the claimant was denied unemployment compensation benefits he otherwise would have received because he was disqualified pursuant to sections 1257(a) and 1260(c). In our opinion such denial effected the penalty intended by the Legislature and satisfied the four-week disqualification imposed under those sections with the week ending July 12, 1986.

Accordingly, the claimant is not ineligible for benefits under section 1452 of the code based upon an unserved disqualification pursuant to code sections 1257(a) and 1260(c) beginning July 13, 1986.

DECISION

The appealed portion of the decision of the administrative law judge is modified. The claimant is ineligible for benefits under section 1452 of the Unemployment Insurance Code beginning June 15, 1986 and ending July 12, 1986. The claimant has served the four-week disqualification imposed pursuant to code sections 1257(a) and 1260(c). He is not ineligible for benefits under section 1452 of the code based on such disqualification beginning July 13, 1986.

Sacramento, California, March 19, 1987.

ROBERT L. HARVEY, Chairman

GEORGE E. MEESE - -

LORETTA A. WALKER

J. RICHARD GLADE

DEBRA A. BERG

JAMES S. STOCKDALE